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11 GARCIA

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 **MANNING & KASS**
15 **ELLROD, RAMIREZ, TRESTER LLP**
16 ATTORNEYS AT LAW

17 ESTATE OF MEAGAN HOCKADAY,
18 LUIS MORADO, as Guardian Ad
19 Litem for minors N.M.M., Z.G.M., and
20 M.H.M., individually, and as
21 Successors in Interest to MEAGAN
22 HOCKADAY deceased, MONIQUE
23 TRENÄE WALLACE, individually,,

24 Plaintiff,

25 v.

26 THE CITY OF OXNARD; OFFICER
27 ROGER GARCIA, and DOES 1-10,
28 Inclusive,

Defendant.

Case No. 2:16-CV-02145-JAK-GJSx
[The Hon. John A. Kronstadt,
Magistrate Judge, Gail J. Standish]

**NOTICE OF MOTION AND
MOTION TO DISMISS PORTIONS
OF COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[FRCP 12(b)(6)]

[Declaration of Angela M. Powell and
proposed Order filed concurrently]

Date: September 12, 2016
Time: 8:30 a.m.
Ctrm: 750

Complaint filed: 3/29/2016

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 12, 2016, at 8:30 a.m., or as
soon thereafter as the matter may be heard, in Courtroom 750 of the above-captioned
Court, located at 255 E. Temple Street, Los Angeles, California 90012, Defendants,
CITY OF OXNARD and OFFICER ROGER GARCIA, will move to dismiss portions

1 of plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure Rule 12(b)(6)
2 based on the following grounds:

3 1. Plaintiffs' fifth claim for municipal liability under *Monell v. Department of*
4 *Soc. Serv.*, 436 U.S. 658 (1978) fails to state a claim upon which relief can be granted
5 against Defendant City of Oxnard (the "City").

6 This Motion to Dismiss is based on this Notice of Motion, the Memorandum of
7 Points and Authorities, the Declaration of Angela M. Powell, and on such other and
8 further matters as the Court may accept at the hearing on this motion.

9 Prior to filing this motion, defendants' counsel wrote to plaintiffs' counsel on
10 May 12, 2016, setting forth defendants' positions as to the issues raised in this motion to
11 dismiss and seeking to confer with plaintiffs' counsel in accordance with C.D. Cal. L.R.
12 7-3. Defendants' counsel did not receive a response. (Powell Decl., ¶2.)

13 DATED: May 19, 2016

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

15 By:

16 /s/ Angela M. Powell

17 Eugene P. Ramirez, Esq.

18 Angela M. Powell, Esq.

19 Attorneys for Defendants, CITY OF
20 OXNARD and OFFICER ROGER
21 GARCIA

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION.**

3 Plaintiffs bring federal and related state claims arising from an incident that
4 occurred on March 28, 2015, involving decedent Meagan Hockaday and City of Oxnard
5 police officers. As set forth below, plaintiffs fail to allege sufficient facts to support
6 their *Monell* claim against the City.

7

8 **2. BRIEF SUMMARY OF PERTINENT ALLEGATIONS OF COMPLAINT.**

9 Plaintiffs allege they are the parents and minor children of decedent Meagan
10 Hockaday. (Complaint, ¶¶3-7.) Plaintiffs allege that on March 28, 2015, Decedent was
11 shot and killed by Oxnard police officers. (Complaint, ¶21.) Plaintiffs allege that both
12 prior to and during the time in which Decedent was shot and killed by Defendants, she
13 posed no reasonable or credible threat of violence to Defendants. (Complaint, ¶26.)
14 Plaintiffs allege that just moments before she was shot and killed, Decedent was
15 suffering from a mental breakdown. (Complaint, ¶26.)

16

17 **3. LEGAL STANDARD FOR MOTION TO DISMISS.**

18 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the
19 legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
20 "Dismissal can be based on the lack of a cognizable legal theory or the absence of
21 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police*
22 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). "When there are well-pleaded factual
23 allegations, a court should assume their veracity and then determine whether they
24 plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679,
25 (2009). However, "the tenet that a court must accept as true all of the allegations
26 contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the
27 elements of a cause of action, supported by mere conclusory statements, do not
28 suffice." *Ibid.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555(2007)).

1 **4. PLAINTIFFS HAVE FAILED TO ALLEGE SUFFICIENT FACTS TO**
 2 **SUPPORT THEIR MONELL CLAIM.**

3 The fifth *Monell* claim against the City of Oxnard fails to allege facts sufficient
 4 to state a claim for municipal liability. A municipality, such as the City of Oxnard,
 5 cannot be held liable under section 1983 “solely because it employs a tortfeasor—or, in
 6 other words, a municipality cannot be held liable under §1983 on a respondeat superior
 7 theory.” *Monell v. Dep’t of Social Servs. of City of New York*, 436 U.S. 658, 691
 8 (1978); *see also Board of County Comm’rs v. Brown*, 520 U.S. 397, 403 (1997) (“We
 9 have consistently refused to hold municipalities liable under a theory of respondeat
 10 superior”). Rather, a municipality can only be sued under section 1983 if the alleged
 11 violation of a constitutional right was caused by a municipal policy or custom. *Monell*,
 12 436 U.S. at 691 (“Congress did not intend municipalities to be held liable unless action
 13 pursuant to official municipal policy of some nature caused a constitutional tort.”).

14 In general, a plaintiff can establish municipal liability in one of three ways: First,
 15 a plaintiff can show that a person with decision-making authority within the
 16 municipality expressly authorized an unconstitutional policy or order. *See Monell*, 436
 17 U.S. at 694. Secondly, a plaintiff can establish that his constitutional rights were
 18 violated by a municipal practice “so permanent and well settled as to constitute a
 19 ‘custom or usage’ ” of the municipality. *Ibid.* Third, a plaintiff can demonstrate that a
 20 municipality failed to adequately train its employees and that such failure constitutes
 21 deliberate indifference to the rights of individuals who may come into contact with
 22 those employees. *See City of Canton v. Harris*, 489 U.S. 378, 388–89 (1989).

23 Merely listing the policy plaintiff believes is unconstitutional without factual
 24 support is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Where a
 25 complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops
 26 short of the line between possibility and plausibility of ‘entitlement to relief.’ ” *Ibid.*
 27 (citations omitted). Rather, plaintiff is required to allege facts explaining how a policy
 28 or custom was deficient, how it caused the alleged harm, and how the infirmity of the

1 custom or policy was so obvious that policymakers were on notice that the
 2 constitutional injury was likely to occur. *See Young v. City of Visalia*, 687 F. Supp. 2d
 3 1141, 1149-50 (E.D. Cal. 2009); *Dominguez v. County of Kern*, 2014 U.S. Dist. LEXIS
 4 80335, *20 (E.D. Cal. June 9, 2014).

5 Plaintiffs' Complaint does not contain sufficient factual allegations to support any
 6 theory of municipal liability against the City of Oxnard.

7 Paragraphs 67, 68, 69(e), 71, and 72, which allege that Defendants' conduct was
 8 ratified by the City's police department supervisory officers, are merely a "formulaic
 9 recitation of the elements" of this cause of action. *See, e.g., Clouthier v. County of*
 10 *Contra Costa*, 591 F.3d 1232, 1250 (9th Cir. 2010); *Ashcroft v. Iqbal*, 556 U.S. 662,
 11 678 (2009). "For there to be ratification, there must be 'something more' than... the
 12 fact that a policymaker concluded that the defendant officer's actions were in keeping
 13 with the applicable policies and procedures" *Kong Meng Xiong v. City of Merced*, 2015
 14 U.S. Dist. LEXIS 99146, *90, (E.D. Cal. July 29, 2015). Paragraphs 68 and 69(d) are
 15 also insufficient to establish ratification: "For there to be ratification, there must be
 16 'something more' than a single failure to discipline...." *Ibid.*

17 "A policymaker's knowledge of an unconstitutional act does not, by itself,
 18 constitute ratification." *Christie v. Iopa*, 176 F.3d 1231, 1239 (9th Cir. 1999). "[A]
 19 policymaker's mere refusal to overrule a subordinate's completed act does not constitute
 20 approval." *Ibid.* Rather, ratification requires the authorized policymaker to make a
 21 "conscious, affirmative choice." *Gillette v. Delmore*, 979 F.2d 1342, 1347 (9th Cir.
 22 1992) Here, the complaint merely recites the elements of the claim without providing
 23 any factual allegations. The complaint alleges that Defendants' conduct was ratified by
 24 the City's police department supervisory officers (¶¶67, 69(e)); and that Defendant
 25 Garcia was not disciplined (¶68). Though plaintiffs need not prove their case at this
 26 stage, "conclusory, 'threadbare' allegations that merely recite the elements of a cause of
 27 action will not defeat a motion to dismiss." *Young*, 687 F. Supp. 2d at 1149 (discussing
 28 *Iqbal*'s effect on claims for municipal liability). The complaint does not identify an

1 affirmative choice by city officials to approve the defendant officers' actions. Plaintiffs'
 2 allegations are insufficient to state a claim for municipal liability premised on
 3 ratification.

4 Plaintiffs' allegations regarding the failure to train also fail to state a claim.
 5 Paragraph 69(b) alleges the City had a policy of inadequately training City police
 6 officers but fails to provide any details. To state a claim for *Monell* liability based on a
 7 failure to train, a plaintiff "must identify the . . . failure to train, explain why it is
 8 deficient, and state how it harmed plaintiff." *Lopez v. County of Los Angeles*, 2015 U.S.
 9 Dist. LEXIS 82918, at *22 (C.D. Cal. June 25, 2015). Furthermore, the plaintiff must
 10 allege how the failure to train amounted to deliberate indifference to the rights of
 11 individuals, "i.e., how the deficiency involved was obvious and the constitutional injury
 12 was likely to occur." *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1149 (E.D. Cal.
 13 2009). Here, the complaint fails to identify what the training practice was, how it was
 14 deficient, or how it caused plaintiffs' alleged injuries. Such "threadbare" allegations do
 15 not provide the City with sufficient notice regarding how it allegedly failed to train its
 16 officers. *See Young*, 687 F. Supp. 2d at 1150 ("Although Paragraph 19 [alleges] that
 17 Plaintiffs' constitutional injuries were 'foreseeable and substantially certain to occur,'
 18 which is an allegation of deliberate indifference, . . . without identifying the training and
 19 hiring practices, how those practices were deficient, and without an identification of the
 20 obviousness of the risk involved, the Court cannot determine if a plausible claim is
 21 made for deliberately indifferent conduct.")

22 Plaintiffs' allegations of an unconstitutional custom, practice, or policy suffer the
 23 same defects as plaintiffs' allegations of ratification and inadequate training. The
 24 allegations of Paragraph 69, subparagraphs (a) through (g), are insufficient because
 25 they are conclusory. To plead a viable *Monell* claim, plaintiffs must identify the
 26 challenged policy/custom, explain how the policy/custom was deficient, explain how
 27 the policy/custom caused the plaintiff harm, and reflect how the policy/custom
 28 amounted to deliberate indifference, i.e. explain how the deficiency involved was

1 obvious and the constitutional injury was likely to occur. *Young*, 687 F.Supp.2d at
2 1149. As a result, the complaint does not state a claim for municipal liability premised
3 on an unconstitutional custom, practice, or policy.

4 Based on the foregoing, plaintiffs' conclusory and threadbare allegations are not
5 sufficient to state a *Monell* claim.

6

7 **5. CONCLUSION.**

8 Based on the foregoing, Defendant's Motion to Dismiss the *Monell* claim against
9 the City should be sustained.

10 DATED: May 19, 2016

11 MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

12 By:

13 /s/ Angela M. Powell

14 Eugene P. Ramirez, Esq.

15 Angela M. Powell, Esq.

16 Attorneys for Defendants, CITY OF
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